FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

In the Matter of	)	
	)	
Mary Robert	)	**MUR 5321**
Janet Robert	)	
Minnesotans for Janet Robert	)	
Robert LaFrentz, as treasurer	)	

STATEMENT OF REASONS

COMMISSIONER SCOTT E. THOMAS

At issue in MUR 5321 was whether a federal candidate's mother had made an excessive contribution to her daughter's congressional campaign. At the outset, I voted to find reason to believe that a violation had occurred and to authorize the Office of General Counsel to conduct an investigation of the matter. Information developed during that investigation persuaded me that the funds given by the mother directly to the candidate were part of a longstanding pattern of comparable gift giving by the mother to all of her children. Accordingly, I voted to take no further action in this matter.

I.

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits any person from making contributions to a candidate or candidate's authorized political committee with respect to any election for Federal office which, in the aggregate, exceeds $1,000. 2 U.S.C. § 441a(a)(1)(A).[1] The Act also prohibits any individual from making contributions "aggregating more than $25,000 in any calendar year." 2 U.S.C. § 441a(a)(3). In addition, the Act prohibits any candidate or political committee from knowingly accepting any contribution or making any expenditure in violation of the provisions of section 441a. 2 U.S.C. § 441a(f).

Although these and other limitations on contributions to federal candidates were generally upheld by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1, 12-38 (1976), the *Buckley* Court struck down as unconstitutional a limitation on expenditures (including contributions) by candidates from their own personal resources on their own federal campaigns. 424 U.S. at 53. The Court explained that "'[m]anifestly, the core problem of

[1] This case arose under the Act before it was amended by the Bipartisan Campaign Reform Act. Similarly, the cited Commission regulations are those in effect in 2002.

avoiding undisclosed and undue influence on candidates from *outside interests* has lesser application when the monies involved come from the candidate himself or from his immediate family.'" 424 U.S. at 53 *quoting Buckley v. Valeo*, 519 F.2d 821, 855 (D.C.Cir. 1975)(emphasis added). Indeed, the Court found that the "use of personal funds reduces the candidate's dependence on *outside contributions* and thereby counteracts the coercive pressures and attendant risks of abuse to which the Act's contribution limitations are directed." *Id.* (emphasis added).

In reaching this conclusion, however, the *Buckley* Court did not go so far as to find that the contribution limitations also did not apply to contributions from family members of the candidate. The *Buckley* Court's insistence that a candidate could not receive *outside* contributions in excess of the limitations was such that even members of the candidate's immediate family were subject to the contribution limits:

> The legislative history of the Act clearly indicates that § 608(a) was not intended to suspend the application of the $1,000 contribution limitation of § 608(b)(1) for members of the candidate's immediate family. . . . Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors.
>
> The limitation on a candidate's expenditure of his own funds differs markedly from a limitation of family contributions both in the absence of any threat of corruption and the presence of a legislative restriction on the candidate's ability to fund his own communication with voters.

424 U.S. at 53, n.59.

Reflecting the Court's decision in *Buckley*, the Commission's regulations specifically permit candidates for Federal office to make unlimited campaign expenditures from personal funds. 11 C.F.R. § 110.10(a). In order to prevent the funneling of money to a candidate's campaign through the disguise of the candidate's personal funds, the Commission's regulations specifically detail what funds are permissible personal funds to be used in a campaign. Thus, "personal funds" include salary and other income earned from *bona fide* employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; and gifts of a personal nature "which had been customarily received prior to candidacy." 11 C.F.R. § 110.10(b)(2)(emphasis added).

On October 11, 2002, the National Republican Congressional Committee filed a complaint with the Commission alleging that Janet Robert, a candidate for Minnesota's Sixth Congressional District in 2002, accepted contributions from her mother, Mary

Robert, in violation of the contribution limitations (2 U.S.C. § 441a), and that Minnesotans for Janet Robert failed to properly disclose these contributions in violation of the reporting requirements of the Act (2 U.S.C. § 434). More specifically, the complaint alleged that Mary Robert made a large gift to Janet Robert who, in turn, loaned $811,219 to her congressional committee. Respondents conceded that an $800,000 gift was made to the candidate but argued that the gift constituted the candidate's personal funds since it was the same amount given to each of Mary Robert's ten children. As a result, Respondents argued the gift was not subject to the contribution limits.

On March 4, 2004, the Commission considered a report prepared by the Office of General Counsel analyzing the allegations presented in the complaint. Approving the Office of General Counsel's recommendations, the Commission found reason to believe that: Mary Robert violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3); Janet Robert violated 2 U.S.C. § 441a(f); and Janet Robert for Congress (later renamed Minnesotans for Janet Robert) and its treasurer violated 2 U.S.C. §§ 441a(f) and 434(b). The Commission also authorized the Office of General Counsel to investigate the matter.[2]

On June 8, 2004, the Commission considered an Office of General Counsel Report analyzing the results of its investigation and recommending that the Commission enter into pre-probable cause conciliation with Mary Robert, Janet Robert and Minnesotans for Janet Robert. A motion to approve the General Counsel's recommendation failed by a vote of 3-3. Commissioners Mason, McDonald and Weintraub voted for the motion, and Commissioners Thomas, Toner and Smith voted against. The Commission then voted to take no further action and close the matter by a vote of 5-1 with Commissioner McDonald voting against.

II.

I believe respondents have demonstrated that the money given by Mary Robert to her daughter, Janet Robert, constituted a gift of a personal nature "which had been customarily received prior to candidacy." 11 C.F.R. § 110.10(b)(2). We now have evidence indicating that there was a clear pattern of gift giving to Janet Robert (and her siblings) by her parents in amounts approaching the $800,000 at issue here. In 1997, for example, large gifts were given to the various children. Several of the children received in excess of $1 million, and Janet Robert received $669,067.00. *See* May 14, 2004 General Counsel's Report #2 at Attachment 2 at 2-3. Thus, the candidate's 1997 gift was about 84% of the 2000 gift.

In addition, it is significant that in 2002, Janet Robert was not the only child to receive $800,000 from her mother. If she had been, it would have seemed that the purpose of Janet Robert's gift was simply to provide funds for her daughter's congressional campaign. The evidence indicates, however, that Mary Robert made a gift of $800,000 to *all* of her ten children--not just Janet. *Id.* at Attachment 2 at 4. I find it

[2] My office records indicate I cast a vote in favor of the recommendations. I note the Commission's records indicate I did not vote on this tally circulation.

difficult to believe that Mary Robert would make $8 million in gifts to her children as a device or ruse simply for funneling $800,000 to her daughter's congressional campaign.

Making this scenario even more unlikely is the fact that Janet Robert had ample funds of her own. Indeed, financial documents provided by Janet Robert show that on May 15, 2002, she had a net worth of over $4 million. *Id.* at Attachment 2 at 10. It appears that Janet Robert had the financial means to make additional loans to her campaign without any funds from her mother.

In finding that the funds at issue here constituted Janet Robert's personal funds, I believe this case is significantly different from MUR 5138, involving a parental gift to now-Congressman Michael Ferguson. In that matter, the candidate's parents established a trust for the candidate on September 26, 2000; on September 28, 2000, the candidate received $1 million from that trust; on September 30, 2000, the candidate loaned his congressional committee $100,000--the first of a series of loans which in the next five weeks before the election would eventually total $525,000. *See* MUR 5138, January 20, 2003 General Counsel's Report #3 at 6. The Commission concluded this matter with a conciliation agreement that included a civil penalty of $210,000.

Unlike the Robert matter where all ten children received gifts of equal amounts, in MUR 5138 the candidate was the only one of four children to receive a disbursement from the trust. Pursuant to the terms of the trust, disbursement was contingent upon the child meeting three requirements: (1) attainment of age 30; (2) receipt of a bachelor's degree from an accredited college or university; and (3) marriage in a ceremony performed by a Roman Catholic priest. The requirements of the trust were such that only the candidate was immediately eligible for a distribution and thus, the candidate (and no other child) received $1 million a mere five weeks before the election. Indeed, a January 20, 2003 General Counsel's Report indicated that at the time of the Report the trust had still only benefited the candidate. MUR 5138, January 20, 2003 General Counsel's Report #3 at 6. In my view, the fact that the candidate was the only one of four children to receive funds from this narrowly designed trust was compelling evidence that the funds were given by the parents for the purpose of supporting the candidate's campaign.

Moreover, unlike the Robert matter, it did not appear that any of the children in MUR 5138 had *ever* received a gift equaling or surpassing the $1 million received by the candidate on the eve of the election. (One child received gifts totalling over $225,000 less in 2000.) *See* January 20, 2003 General Counsel's Report #3 at Attachment 1. Further, the largest annual gift previously received by the candidate himself had been about $319,000, amounting to only about 32% of the 2000 gift. I did not believe it possible to meet the "customarily received" test, 11 C.F.R. § 110.10(b)(2), when the parents had never made comparable gifts before. By contrast, the $800,000 gift received by Janet Robert was not unique. As discussed above, she had received $669,067 in 1997, and all ten children (including the candidate) received the $800,000 gift in 2002.

Finally, unlike the Robert matter, it was apparent that the candidate in MUR 5138 needed the money. "The Candidate's May 2000 EIGA [Ethics in Government Act] statement for the period 1/1/99 - 5/6/00 reported a 1999 salary of $38,503, and a year-to-date salary of $2,000. According to the EIGA statement, the Candidate's total current assets and 'unearned income' were valued in the range of $137,000 to $456,000." MUR 5138, August 12, 2002 General Counsel's Brief at 4. In view of these financial constraints, a $1 million disbursement to the candidate five weeks before the general election appeared designed to influence that election.

In deciding not to pursue the Robert matter, I could not agree with my colleagues who wanted to find a violation, yet impose a reduced civil penalty. Obviously, I do not believe there was a violation here. (Even if I did, such an approach would not be appropriate in light of the civil penalty settled upon in MUR 5138.) Nor do I believe the circumstances in MUR 5138 are legally indistinguishable. I note the record in MUR 5138 reflects that all commissioners viewed the allegations there as a violation of law.

III.

For all of the above stated reasons, I voted to take no further action against Janet Robert, Mary Robert, and Minnesotans for Janet Robert in MUR 5321.

7/7/04
Date

Scott E. Thomas
Commissioner